

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

RAYMOND H. SIMER,
No. S06550,

Petitioner,

vs.

JOHN VARGA,

Respondent.

Case No. 18-cv-2137-NJR

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Petitioner Raymond H. Simer, an inmate of the Illinois Department of Corrections, is currently incarcerated at Dixon Correctional Center (“Dixon”). Simer recently filed a Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge the constitutionality of his confinement. Specifically, Simer challenges his June 8, 2007 conviction for three counts of predatory criminal sexual abuse for which he is serving a 36-year sentence. Simer was convicted after a jury trial in the Marion County Circuit Court, Case No. 06-CF-206.

Simer appealed his conviction to the Appellate Court of Illinois, Fifth District in Case No. 05-15-0383. His Petition indicates that his appeal alleged that he suffered from a Traumatic Brain Injury and was unable to understand what was said at trial. (Doc.1, p. 3). According to the Petition, the appeal was denied on March 5, 2018. (Doc. 1, p. 2). Simer then appealed to the Illinois Supreme Court, and the appeal was denied. (*Id.* at p. 3).¹ The Petition indicates that Simer filed three post-

¹ The Petition indicates that the Illinois Supreme Court denied his appeal on August 27, 2015 (Doc. 1, p. 3).

conviction petitions alleging ineffective assistance of trial and appellate counsel. (*Id.* at pp. 4-6). The petitions were denied, and Simer appealed. (*Id.* at p. 5). The appellate court affirmed the denial. (*Id.* at p. 4).

In his Petition currently before the Court, Simer makes four claims for relief: (1) he was denied effective assistance of trial counsel because counsel failed to present evidence that the victim lied about the dates when the sexual abuse allegedly occurred, (2) he was denied effective assistance of trial counsel because counsel failed to raises issues with DNA evidence, (3) he was denied effective assistance of trial counsel because counsel failed to raise the issue of Simer's fitness and ability to understand with the trial court, and (4) he was denied effective assistance of counsel because counsel failed to present witnesses and evidence to support Simer's defense.

IT IS HEREBY ORDERED that Respondent shall answer the Petition or otherwise plead on or before **March 1, 2019**. This preliminary order to respond does not, of course, preclude the State from making whatever waiver, exhaustion, or timeliness argument it may wish to present.² Service upon the Illinois Attorney General, Criminal Appeals Bureau, 100 West Randolph, 12th Floor, Chicago, Illinois 60601, shall constitute sufficient service.

IT IS FURTHER ORDERED that pursuant to Local Rule 72.1(a)(2), this action is referred to United States Magistrate Judge Clifford J. Proud for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be **REFERRED** to United States Magistrate Judge Clifford J. Proud for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral*.

²² The Court notes that given the contradictory dates and information in his Petition, Simer's claims may well be untimely, or he may not have exhausted all of his claims presented in his current Petition. The Court will allow the Petition to proceed, however, in order to fully develop the record as to Simer's attempts at exhausting his claims.

Simer is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later than **seven days** after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. *See* FED. R. Civ. P. 41(b).

IT IS SO ORDERED.

DATED: January 29, 2019

NANCY J. ROSENSTENGEL
United States District Judge